

# **Exhibit 8**

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UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

-----x

PENSKE MEDIA CORPORATION,

Plaintiff,

-against- No. 1:20-CV-04583 (MKV)

SHUTTERSTOCK, INC.,

Defendant.

-----x

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REMOTE VIDEOTAPED DEPOSITION

of

STAN PAVLOVSKY

February 18, 2022

Reported by:

Robin LaFemina, RPR, CLR

Job No.: SY 4203

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2 A. I'm not sure what those topics  
3 are.

4 Q. Do you -- are you aware that  
5 you've been designated to speak on behalf of  
6 the company regarding Shutterstock's  
7 termination of the agreement that's at issue  
8 in this case?

9 A. Yes.

10 Q. And are you aware that you've  
11 been designated to speak on behalf of the  
12 corporation regarding Shutterstock's alleged  
13 damages in this case?

14 A. Yes.

15 Q. Okay.  
16 And are you aware that you've  
17 been identified as someone who's likely to  
18 have discoverable information regarding the  
19 discussions between the parties pertaining  
20 to the contract including problems relating  
21 to PMC's performance?

22 A. Yes.

23 Q. And do you have knowledge about  
24 that?

25 A. Yes.

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2 correct?

3 A. Yes. Assuming they're using  
4 their computer to access the web page.

5 Q. Can you tell me in what way  
6 Shutterstock is claiming PMC has caused  
7 Shutterstock to suffer damages or harm?

8 A. So the primary way is we've had,  
9 based on the last advance that we paid to  
10 PMC, we've had roughly four months where  
11 we've not been provided the primary services  
12 under the agreement, so that's one piece of  
13 it. And then the second piece of it is PMC  
14 continued to access Shutterstock content  
15 after the termination.

16 Q. Are there any other ways in  
17 which Shutterstock is contending that PMC  
18 caused Shutterstock to suffer harm or  
19 damages?

20 MS. LACKMAN: Objection. You  
21 mean in the litigation?

22 MS. ARATO: Correct.

23 A. Not that I'm aware of.

24 Q. Are there any ways you are aware  
25 of that Shutterstock is contending that PMC

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2 caused Shutterstock to suffer harm outside  
3 of what you're alleging in the litigation?

4 A. No.

5 MS. LACKMAN: I'm sorry.

6 Objection. To the extent he's  
7 designated on the topic of damages,  
8 which I understood to be related to the  
9 Complaint, then I think there's  
10 potential privilege implication, so I  
11 just want to be able to caution the  
12 witness.

13 Q. When you say -- and what -- what  
14 specific damage is Shutterstock claiming it  
15 incurred or suffered as a result of not  
16 receiving primary services for this period  
17 of four months related to the last advance  
18 that Shutterstock paid?

19 A. Well, we pay \$3.5 million for an  
20 annual advance, and so we didn't receive  
21 services for four months. That's four  
22 months pro rata 3.5 million.

23 Q. But your contention is that  
24 Shutterstock suffered harm equal to one  
25 third of the value of the \$3.5 million

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2 advance?

3 A. Yes.

4 Q. Did Shutterstock seek to  
5 quantify its harm in any other way other  
6 than just applying a pro rata apportionment  
7 of the \$3.5 million advance?

8 A. I don't know.

9 Q. You're the corporate  
10 representative.

11 A. From my understanding, no.

12 Q. What damage has Shutterstock  
13 incurred with respect to the continued  
14 access to Shutterstock content?

15 A. It's to the tune of roughly  
16 \$5,000.

17 Q. And what is that comprised of?

18 A. That's based on counsel looking  
19 at our database and providing me the estimate.

20 Q. I don't know what that means,  
21 providing you the estimate.

22 A. Providing me the estimate based  
23 on downloads and the royalties that we would  
24 pay on those downloads.

25 Q. So counsel looked at the

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2 database and then gave you an estimate of  
3 what?

4 MS. LACKMAN: Objection. Asked  
5 and answered.

6 A. The cost that we incurred by  
7 virtue of that content being downloaded.

8 Q. Right.

9 And what -- what are those costs  
10 that you incurred by virtue of the  
11 information being downloaded?

12 A. If you're asking me the specific  
13 mechanics of how we came up -- how the team  
14 came up with the calculation, I don't know.

15 Q. You can't tell me how the  
16 approximate \$5,000 is broken down?

17 A. I'm assuming it's based on the  
18 number of images being downloaded times the  
19 cost of each.

20 Q. But you believe that Shutterstock  
21 has lost \$5,000 of revenue from the value of  
22 the images that PMC downloaded and you say  
23 didn't pay for?

24 A. No. I am saying that it cost us  
25 \$5,000 of expense based on those downloads.

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2 Q. And how -- what expenses did  
3 Shutterstock incur when you found those  
4 downloads?

5 A. We pay royalties on content that  
6 is downloaded from Shutterstock for bidders.

7 Q. And how did that cause  
8 Shutterstock to incur \$5,000 of damage  
9 related to the downloading?

10 MS. LACKMAN: Objection. Asked  
11 and answered.

12 A. I answered that question.

13 Q. Yeah, I'm not following your  
14 answer. I apologize.

15 A. Okay. So as an example, for  
16 every image that is downloaded, we pay  
17 contributors a royalty. So when PMC  
18 continued to download content after the deal  
19 was terminated, we still had to continue to  
20 pay royalties on those downloads.

21 Q. So you believe that Shutterstock  
22 paid royalties equal to \$5,000 to its  
23 contributors for images that PMC downloaded  
24 after July 17, 2020?

25 A. Yes.



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2 Q. And that that's the sole basis  
3 of the damage that Shutterstock's contending  
4 it incurred as a result of that conduct?

5 A. Yes.

6 Q. Approximately how many images  
7 would PMC need to download for Shutterstock  
8 to have to pay \$5,000 of royalties on those  
9 images?

10 A. I don't know. We have different  
11 tiers of royalties for different contributors.

12 Q. If I were to tell you that  
13 Shutterstock has provided documentation to  
14 PMC showing that, and I'm approximating  
15 here, so let's just do approximation, that  
16 no more than possibly 24 images were  
17 downloaded after July 17, 2020, does it seem  
18 reasonable to you that Shutterstock would  
19 owe royalties of \$5,000 to contributors for  
20 24 images?

21 A. I don't know the nature of the  
22 images, so I can't answer that question.

23 Q. What is the average price that  
24 Shutterstock charges on its website for  
25 downloading of images for use in editorial

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2 content?

3 MS. LACKMAN: Objection. Vague.

4 A. Well, the revenue that we  
5 generate is sort of separate from what we  
6 pay contributors.

7 Q. Right. But you pay contributors  
8 a portion of the revenue you generate;  
9 correct?

10 A. A portion of downloaded -- of  
11 downloads; yes.

12 Q. Right.

13 So don't you need to start with  
14 the revenue that is payable to Shutterstock  
15 for those downloads before you can get to  
16 how much of that revenue is payable to  
17 contributors?

18 MS. LACKMAN: Objection. Calls  
19 for speculation.

20 A. Yes.

21 Q. Right.

22 So the average price that  
23 Shutterstock charges for an end user in the  
24 open marketplace, not special editorial  
25 client, to download an image for editorial

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2 use?

3 MS. LACKMAN: Objection. Vague.

4 Calls for speculation.

5 A. Most of our revenue comes on a  
6 subscription basis in the marketplace, which  
7 is why I'm struggling to answer your  
8 question, though I don't know the specific  
9 price per download.

10 Q. What if it's an a la carte price?

11 A. I don't know.

12 Q. Is anyone -- but somebody  
13 quantified this to get to the \$5,000 number?

14 A. Yes.

15 Q. Okay.

16 Is that in a document somewhere?

17 A. I don't know.

18 MS. ARATO: If that's been  
19 quantified, it hasn't been produced to  
20 us, so we would ask for that.

21 MS. LACKMAN: We'll check and  
22 we'll check to see if it was requested.

23 MS. ARATO: We asked for all  
24 documents relating to damages.

25 MS. LACKMAN: We will check.

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2 Q. Other than what you just  
3 testified to, is there any other way that  
4 you believe Shutterstock is contending in  
5 this lawsuit that PMC's conduct has caused  
6 it to incur damages or harm?

7 MS. LACKMAN: Objection. Asked  
8 and answered.

9 A. Not that I'm aware.

10 Q. Let me show you what's been  
11 marked as Exhibit 22.

12 (Pavlovsky Exhibit 22,  
13 e-mail chain bearing Bates Nos.  
14 SSTK111743-747, marked for  
15 identification, as of this date.)

16 Q. This is a document that starts  
17 Bates stamp SSTK111743 to 111747. I will  
18 represent to you this is an e-mail chain  
19 that you're not on. I'm not going to ask  
20 you about all of it. I would like you to go  
21 to the next to last page, SSTK111746.

22 Do you see here on April 13,  
23 2020, Candice wrote to Steve and Anh, I need  
24 to know ASAP two things re: PMC.

25 1. How long would it take to

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2 off the record, please, and when we do,

3 can I get a time check?

4 THE VIDEOGRAPHER: We are off

5 the record and it's 6:16 p.m.

6 CONTINUED BY MS. ARATO:

7 Q. With respect to the \$5,000 --

8 THE VIDEOGRAPHER: Counsel, one

9 moment.

10 MS. ARATO: All right.

11 THE VIDEOGRAPHER: We are back

12 on the record at 6:28 p.m.

13 CONTINUED BY MS. ARATO:

14 Q. With respect to the \$5,000 in

15 damages that you said Shutterstock incurred

16 in connection with PMC's continuing to

17 access Shutterstock content after July 17,

18 does Shutterstock have documentation showing

19 that it paid contributors approximately

20 \$5,000 for the downloading of the content?

21 A. Yes, we would.

22 Q. Would that be in royalty reports

23 issued to those contributors?

24 A. Yes.

25 Q. Is the basis for Shutterstock

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2 saying it suffered that damage that PMC did  
3 not pay Shutterstock a license fee for those  
4 images that were downloaded, yet  
5 Shutterstock had to pay contributors for  
6 those downloads?

7 A. So prior to the agreement being  
8 terminated, that was an additional benefit  
9 that PMC had where we covered the cost, so  
10 post termination that was just the cost.

11 Q. Right. But I'm asking you if  
12 PMC had paid you for those downloads and  
13 then you paid a portion of that through the  
14 contributors, Shutterstock wouldn't have  
15 incurred any damage; correct?

16 MS. LACKMAN: Objection. Calls  
17 for speculation.

18 A. I believe that's right.

19 Q. Right.

20 So is what you're saying about  
21 the damages -- I'll rephrase.

22 Is Shutterstock's position on  
23 this \$5,000 worth of damages that PMC did  
24 not pay Shutterstock for the images that  
25 were downloaded after July 17, but

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2 Shutterstock nevertheless paid contributors  
3 for those downloads?

4 MS. LACKMAN: Objection. Asked  
5 and answered.

6 A. Yes.

7 Q. And so Shutterstock pays its  
8 contributors whether or not Shutterstock  
9 receives a payment from Shutterstock  
10 customers?

11 MS. LACKMAN: Objection. Calls  
12 for speculation. Also vague.

13 A. Unless there's a special  
14 agreement; yes.

15 Q. So -- and do contributors get  
16 paid a royalty on the revenues that  
17 Shutterstock receives for licensing  
18 contributors' images?

19 MS. LACKMAN: Objection. Vague.  
20 And you're asking in his personal  
21 capacity?

22 MS. ARATO: I'm asking about  
23 damages.

24 MS. LACKMAN: No, you're asking  
25 about --

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2 MS. ARATO: It underlies the  
3 damage theory.

4 MS. LACKMAN: You're asking only  
5 about the photos in this case then?  
6 The photos that PMC downloaded?  
7 Because I'm hearing a question about  
8 all photos that Shutterstock has 300  
9 million assets. He's not designated  
10 for that topic.

11 A. Sorry. Say that again?

12 MS. ARATO: I'll ask it both  
13 ways and one of them will be within his  
14 corporate role and one won't.

15 Q. With respect to the images that  
16 PMC downloaded after July 17, is  
17 Shutterstock's arrangement with the  
18 contributors that they get royalties based  
19 on Shutterstock's earnings from licensing  
20 their content?

21 A. Unless there's a set --  
22 different agreement, in many cases, yes.

23 Q. But I'm asking specifically  
24 about the images at issue in this case.

25 A. I don't know because as I said



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2 earlier, I don't know the specific mechanics  
3 of how we came up with that.

4 Q. Right. So that's why I'm asking  
5 you the question more generally now like is  
6 it -- typically I would understand that if  
7 somebody got a royalty percentage of  
8 earnings that Shutterstock made on licensing  
9 content, that if Shutterstock received no  
10 money or earnings, there would be no  
11 royalties that would be payable to the  
12 contributor.

13 MS. LACKMAN: Objection. Calls  
14 for speculation.

15 A. There are situations and  
16 scenarios where it is very difficult to  
17 attribute specific revenue to any one image.  
18 In those cases, we have -- we will have a  
19 specific arrangement to pay a royalty on  
20 that image when it's downloaded. In other  
21 cases, it's based on the revenue that is  
22 generated from those images.

23 Q. So in the first instance that  
24 you just described, Shutterstock would  
25 pay -- make a payment to a contributor

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2 irrespective of whether Shutterstock  
3 received any revenue?

4 A. Correct.

5 Q. And in the second --

6 A. Or, sorry, just to clarify,  
7 specific to that photo versus potentially a  
8 bundle of content.

9 Q. Okay.

10 And in the second scenario,  
11 would Shutterstock make a royalty payment to  
12 a contributor if Shutterstock never received  
13 a payment from the user of that image?

14 A. No. We would not pay a royalty.

15 Q. So for the downloads that are at  
16 issue here, is Shutterstock contending that  
17 PMC paid Shutterstock for those downloads?

18 MS. LACKMAN: Objection. No  
19 foundation.

20 A. No.

21 Q. So depending on the arrangement  
22 with the photographers of those images, the  
23 fact that PMC did not pay Shutterstock may  
24 mean that Shutterstock did not pay the  
25 contributors royalties; correct?

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2 MS. LACKMAN: Objection.

3 Mischaracterizes the testimony.

4 A. That is not correct.

5 Q. Why is that not correct?

6 A. While that is a possible  
7 scenario, we would not make the argument  
8 that there's money owed to us if we never  
9 paid that money out.

10 Q. So it's your belief that  
11 Shutterstock paid contributors approximately  
12 \$5,000 in royalties related to the downloads  
13 that are at issue in this case?

14 A. Yes.

15 Q. But you don't have any details  
16 about that?

17 A. I don't have the specific  
18 details; no.

19 Q. Have you seen -- have you seen  
20 documentation that demonstrates that?

21 A. No.

22 Q. You're just -- you're -- what  
23 are you relying on then?

24 A. I'm relying on my team.

25 Q. I think you said before it was

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2 counsel.

3 A. Correct.

4 Q. You're relying on in-house  
5 counsel?

6 A. Yes.

7 Q. And who is that counsel?

8 A. I don't remember specifically  
9 who showed me the value of that, but I'm  
10 assuming it was Heidi.

11 Q. And when did Heidi leave the  
12 company?

13 A. I don't remember what month she  
14 left.

15 Q. Do you know if she left before  
16 Shutterstock filed its counterclaims in this  
17 case?

18 A. I don't remember.

19 Q. Okay.

20 So if Shutterstock wanted to  
21 prove up these damages, it would have  
22 documentation to show that it made these  
23 payments to the contributors?

24 MS. LACKMAN: Objection.

25 A. We would provide documentation

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2 in support of that claim; yes.

3 Q. And then when you -- the second  
4 category of damages you testified about  
5 regarding the pro rata share of the annual  
6 advance paid for -- paid on July 1, 2019,  
7 you said that it related to about four  
8 months of not being provided primary  
9 services by PMC?

10 A. Correct.

11 Q. And are those primary services  
12 the loss of the live event access?

13 A. Yes.

14 Q. Anything else?

15 A. Not that I can think of right  
16 now.

17 Q. Okay. I have nothing further.

18 MS. LACKMAN: I have no  
19 questions for the witness.

20 MS. ARATO: Okay. And then --

21 MS. LACKMAN: Oh.

22 MS. ARATO: I think we've made  
23 this clear before, but we've said all  
24 transcripts are designated  
25 confidential, so your transcript will